

# Aging Division

## Wyoming Department of Health

### Information and Education Bulletin

#### **Subject: Wyoming Adult Protective Services Act**

As a reminder, Wyoming Statute 35-20-101 through 35-20-116 has some very specific requirements regarding reporting of abuse. This law, known as the Adult Protective Services Act, has the following requirements that are applicable to all organizations and persons. It is important that your internal Adult Protective Services policy take into account these specific requirements of the law:

Any person or agency who knows or has reasonable cause to believe that a vulnerable adult is being or has been abused, neglected, exploited, intimidated or abandoned or is committing self neglect shall report the information immediately to a law enforcement agency or the department. Anyone who in good faith makes a report pursuant to this section is immune from civil liability for making the report.

The report may be made orally or in writing. The report shall provide to law enforcement or the department the following, to the extent available:

- The name, age and address of the vulnerable adult;

- The name and address of any person responsible for the vulnerable adult's care;

- The nature and extent of the vulnerable adult's condition;

- The basis of the reporter's knowledge;

- The names and conditions of the other residents, if the vulnerable adult resides in a facility with other vulnerable adults;

- An evaluation of the persons responsible for the care of the residents, if the vulnerable adult resides in a facility with other vulnerable adults;

- The adequacy of the facility environment;

- Any evidence of previous injuries;

- Any collaborative information; and

- Any other relevant information.

After receipt of a report that a vulnerable adult is suspected of being or has been abused, neglected, exploited, intimidated or abandoned or is committing self neglect, the department shall notify law enforcement and may request assistance from appropriate health or mental health agencies.

If a law enforcement officer determines that a vulnerable adult is abused, neglected, exploited, intimidated or abandoned, or is committing self neglect, he shall notify the department concerning the potential need of the vulnerable adult for protective services.

Any report or notification to the department that a vulnerable adult is, or is suspected of being, abused, neglected, exploited, intimidated or abandoned, or is committing self neglect, shall be investigated, a determination shall be made whether protective services are necessary and, whether an individual instruction exists under W.S. 35-22-401 through 35-22-416. If determined necessary, protective services shall be furnished by the department within three (3) days from the time the report or notice is received by the department. The investigation may include a visit to the facility in which the vulnerable adult resides and an interview with the vulnerable adult.

Each substantiated report of abuse, neglect, exploitation, intimidation or abandonment of a vulnerable adult pursuant to this act shall be entered and maintained within the central registry of vulnerable adult protection cases under W.S. 35-20-115.

#### **Duty to report.**

The duty to report imposed by W.S. 35-20-103 applies without exception to a person or agency who knows, or has sufficient knowledge which a prudent and cautious man in similar circumstances would have to believe, that a vulnerable adult has been or is being abused, neglected, exploited, intimidated or abandoned, or is committing self neglect.

Any person or agency who knows or has sufficient knowledge which a prudent and cautious man in similar circumstances would have to believe that a vulnerable adult is being or has been abused, neglected, exploited, intimidated or abandoned, or is committing self neglect, and knowingly fails to report in accordance with this act is guilty of a misdemeanor punishable by imprisonment for not more than one (1) year, a fine of not more than one thousand dollars (\$1,000.00), or both.

#### **False report; penalty.**

A person commits a misdemeanor punishable by imprisonment for not more than one (1) year, a fine of not more than one thousand dollars (\$1,000.00), or both, if he reports information pursuant to this act and knows or has reason to know the information is false or lacks factual foundation.

#### **Immunity**

A person or agency filing a report under this act or testifying or otherwise participating in any judicial proceeding arising from a petition, report, or investigation is immune from civil or criminal liability on account of the person's petition, report, testimony or participation, unless the person knowingly or negligently reports information that is false or lacks factual foundation. The immunity provided under

this subsection applies only to those persons whose professional communications are generally confidential or subject to the Wyoming Public Records Act, W.S. 16-4-201 et seq. including:

Attorneys;

Members of the clergy;

Medical practitioners;

Social workers;

Mental health professionals;

Nursing home staff; assisted living facility staff; adult day care center staff; adult family-care home staff; social worker, or other professional adult care, residential or institutional staff;

State, county or municipal criminal justice employees or law enforcement officers; and

Bank, savings and loan or credit union officers, trustees or employees.

A person or agency, including an authorized department volunteer, medical personnel or law enforcement officer who, at the request of the department, participates in an investigation required by this act or in an action that results from that investigation is immune from civil or criminal liability for any act or omission relating to that participation if the person acted in good faith and, if applicable, within the course or scope of the person's assigned responsibilities or duties.

**Definitions.**

"Abandonment" means leaving a vulnerable adult without financial support or the means or ability to obtain food, clothing, shelter or health care;

"Abuse" means the intentional or reckless infliction, by the vulnerable adult's caregiver, family member or other individual of:

Injury;

Unreasonable confinement which threatens the welfare and well being of a vulnerable adult;

Cruel punishment with resulting physical or emotional harm or pain to a vulnerable adult; or

Photographing vulnerable adults in violation of W.S. 6-4-304(b).

"Administrator" means the director of the department of family services or his designee;

"Caregiver" means any person or agency responsible for the care of a vulnerable adult because of:

A family relationship;

Voluntary assumption of responsibility for care;

Court ordered responsibility or placement;

Rendering services in an adult workshop or adult residential program;

Rendering services in an institution or in a community-based program; or

Acceptance of a legal obligation or responsibility to the vulnerable adult through a power of attorney, advanced health care directive or other legal designation.

"Court" means the district court in the district where the vulnerable adult resides or is found;

"Department" means the state department of family services or its designee;

"Emergency services" means those services, including physical care and custody in a nonrestrictive environment, necessary to maintain the vulnerable adult's vital functions and without which services the vulnerable adult would suffer irreparable harm or death;

"Exploitation" means the reckless or intentional act taken by any person, or any use of the power of attorney, conservatorship or guardianship of a vulnerable adult, to:

Obtain control through deception, harassment, intimidation or undue influence over the vulnerable adult's money, assets or property with the intention of permanently or temporarily depriving the vulnerable adult of the ownership, use, benefit or possession of his money, assets or property; or

In the absence of legal authority:

Employ the services of a third party for the profit or advantage of the person or another person to the detriment of a vulnerable adult;

Force, compel, coerce or entice a vulnerable adult to perform services for the profit or advantage of another against the will of the vulnerable adult.

"Neglect" means the deprivation of, or failure to provide, the minimum food, shelter, clothing, supervision, physical and mental health care, other care and prescribed medication as necessary to maintain a vulnerable adult's life or health, or which may result in a life-threatening situation. The withholding of health care from a vulnerable adult is not neglect if:

Treatment is given in good faith by spiritual means alone, through prayer, by a duly accredited practitioner in accordance with the tenets and practices of a recognized church or religious denomination;

The withholding of health care is in accordance with a declaration executed pursuant to W.S. 35-22-401 through 35-22-416; or

Care is provided by a hospice licensed in accordance with and pursuant to W.S. 35-2-901 through 35-2-910.

"Protective services" means those emergency services provided by the department to assist vulnerable adults to prevent or terminate abuse, neglect, exploitation, intimidation or abandonment until the vulnerable adult no longer needs those services. These services may include social casework, case management, home care, day care, social services, health care, psychiatric or health evaluations and other emergency services consistent with this act;

"Capacity to consent" means the ability to understand and appreciate the nature and consequences of making decisions concerning one's person, including, provisions for health or mental health care, food, shelter, clothing, safety or financial affairs. This determination may be based on assessment or investigative findings, observation or medical or mental health evaluations;

"Injury" means any harm, including disfigurement, impairment of any bodily organ, skin bruising, laceration, bleeding, burn, fracture or dislocation of any bone, subdural hematoma, malnutrition, dehydration or pressure sores;

"Mental disability" means a condition causing mental dysfunction resulting in an inability to manage resources, carry out the activities of daily living or protect oneself from neglect, abuse, exploitation or hazardous situations without assistance from others. Whether or not a mental dysfunction of such degree exists is subject to an evaluation by a licensed psychologist, psychiatrist or other qualified licensed mental health professional or licensed physician, if disputed;

"Self neglect" means when a vulnerable adult is unable, due to physical or mental disability, or refuses to perform essential self-care tasks, including providing essential food, clothing, shelter or medical care, obtaining goods and services necessary to maintain physical health, mental health, emotional well-being and general safety, or managing financial affairs;

"Vulnerable adult" means any person eighteen (18) years of age or older who is unable to manage and take care of himself or his money, assets or property without assistance as a result of advanced age or physical or mental disability;

"Substantiated report" means any report of abandonment, abuse, exploitation, intimidation or neglect pursuant to this act that is determined upon investigation to establish that credible evidence of the alleged abandonment, abuse, exploitation, intimidation or neglect exists;

"Intimidation" means the communication by word or act to a vulnerable adult that he, his family, friends or pets will be deprived of food, shelter, clothing, supervision, prescribed medication, physical or mental health care and other medical care necessary to maintain a vulnerable adult's health, financial support or will suffer physical violence;

**From the APS Web Site: <http://dfsweb.state.wy.us/aps.htm>**

## **WHAT ARE PROTECTIVE SERVICES?**

The goal of adult protective services is to ensure that safety and basic needs are being met in the least restrictive environment. This can be in an adult's home or elsewhere. These services are provided or arranged by the Department of Family Services (DFS). Services may include but are not limited to: social casework, case management, home care, day care, health care services, homemaker services, emergency shelter, assistance obtaining guardianship and referrals to appropriate community agencies.

### **WHO IS COVERED UNDER ADULT PROTECTIVE SERVICES?**

The program serves vulnerable adults which means any person eighteen (18) years of age or older who is unable to manage and take care of himself or his property without assistance as a result of advanced age or physical or mental disability.

### **ADULT CARE FACILITIES**

DFS will also accept for investigation and assessment, concerns for people residing in nursing homes and other residential care facilities.

### **WHO COULD BENEFIT FROM ADULT PROTECTIVE SERVICES?**

Any eligible adult who is being abused, neglected, abandoned or exploited. Usually this involves a caregiver, but also would include adults who live alone and are not able to care for themselves without serious risk of harm to their well being.

### **Relevant definitions include:**

Abandonment: leaving a vulnerable adult without financial support or the means or ability to obtain food, clothing, shelter or health care.

Abuse: intentionally or recklessly inflicting physical or mental injury, unreasonable confinement, intimidation, cruel punishment, and may include sexual offenses.

Exploitation: the reckless or intentional act taken to obtain control through deception, harassment, intimidation or undue influence over the vulnerable adult's money, assets or property with the intention of depriving the vulnerable adult of those assets.

Neglect: depriving a vulnerable adult of the minimum food, shelter, clothing, supervision, physical and mental health care, and other care necessary to maintain life or health, or which may result in a life-threatening situation.

Self-neglect: when a vulnerable adult is unable, due to physical or mental disability, or refuses to perform essential self-care tasks, including providing essential food, clothing, shelter, or medical care, obtaining physical or mental health care, emotional well-being and general safety, or managing financial affairs.

### **WHO CAN REPORT CONCERNS?**

Anyone who has a reasonable suspicion or knowledge that an adult is being abused, abandoned, exploited, neglected or is self-neglecting should make a report to the Department of Family Services or law enforcement. Anyone making such a report in good faith is immune from civil liability, even if the investigation indicates there is no wrongdoing. Names of reporters are kept confidential.

## **HOW DO I MAKE A REPORT?**

Reports should be made to your local Department of Family Services by phone or in person. An on-call caseworker is available 24 hours a day. You may also make a report to your local law enforcement agency, such as the police or sheriff.

## **WHAT HAPPENS AFTER I MAKE A REPORT?**

A DFS caseworker, law enforcement officer, or both will contact the vulnerable adult and caregiver to arrange a home visit and complete an assessment of the situation. The reporter may be contacted for further information.

## **STATEWIDE CONTACTS FOR WYOMING**

### **Department of Family Services**

Adult Protective Services	(307) 777-3602
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### **Department of Health**

Aging Division	(307) 777-7995
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Long Term Care Ombudsman	(307) 322-5553
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Office of Health Quality	(307) 777-7123
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Division of Developmental Disabilities	(307) 777-7115
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### **Attorney General**

Consumer Fraud Division	(307) 777-5838
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Medicaid Fraud Control Unit	(307) 777-3444 or toll free at (800) 378-0345
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The APS Policy and Procedure Manual is available from this web site:  
<http://dfsweb.state.wy.us/APS/apManual.html>

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